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GOVERNMENT OF INDIA
MINISTRY OF FINANCE : DEPARTMENT OF REVENUE
OFFICE OF THE COMMISSIONER OF CENTRAL EXCISE & SERVICE TAX
No.1, WILLIAMS ROAD, TRICHIRAPALLI – 620 001

TRADE NOTICE NO.09/2009

Dated: 14.10.2009

Sub:C.Ex.-Board's letter F.No.4/2/2009-Cx.1 dated 15.09.2009-
Communication Reg.

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Copy of Board's letter F.No.4/2/2009-Cx.1 dated 15.09.2009 regarding benefit of reduced penalty under provisos to Section 11AC- whether also available at appeal stage is communicated herewith.

2. The contents of the Trade Notice may be brought to the knowledge of all constituent members of Trade Associations /Chambers of Commerce.

(Issued from file C.NO.IV/16/02/2009-C.Ex.Pol)

Sd./-
(R. SARAVANA KUMAR)
Addl. COMMISSIONER(Tech)

To
As per mailing list II/III.

Sub.:- Benefit of reduced penalty under provisos to Section 11AC- whether also available at appeal stage- reg.

A case has been brought of the notice of the Board wherein a Commissioner (Appeals) had allowed the benefit of proviso to Section 11AC of the Central Excise Act, 1944 to pay penalty at the reduced rate of 25% within 30 days of the communication of the Order in Appeal. Commissioner (Appeals) has read Section 11AC and Section 35 F together to arrive at the aforesaid decision.

2. The matter has been examined. The provisions relating to reduction of penalty to 25% are contained in proviso (1) to (4) of Section 11AC. In terms of proviso (1) and (2), a penalty imposed under Section 11AC can be reduced to 25% on fulfillment of following conditions.

- i. Duty determined under Section 11A(2) and interest payable thereon has been paid within 30 days.
- ii. The said period of 30 days is calculated from the date of communication of the order passed by a Central Excise Officer determining the duty.
- iii. The reduced 25% penalty is also paid within 30 days of the date of communication of the order passed by the Central Excise Officer.

3. From the above it is clear that in order to avail the benefit of 25% penalty, the duty, interest and penalty are required to be paid within 30 days of communication of the order passed by the adjudicating authority. Further, the reading of proviso (4) would also support this interpretation because the said proviso stipulate that wherever duty amount is increased at any appellate stage, in that case in order to avail the benefit of 25 % penalty, the assessee is required to pay differential amount within 30 days of the passing of the order by the appellate authority. A combined reading of all the 4 proviso would, therefore, make it clear that the benefit of 25% penalty is applicable only when the assessee has paid duty, interest and the reduced penalty within 30 days of communication of the order passed by the adjudicating authority. However, if the penalty amount is increased at the appellate stage, in that case the 25% of differential amount of penalty can be paid within 30 days of communication of said appellate order. Therefore, the view taken by the Commissioner (Appeal) is not as per the provision of law.

Sd/-

(MADAN MOHAN)

Under Secretary to the Govt. of India